

collecting and transmitting event recorder data, train performance data, and track data . . . .”  
The area noted in the reference, column 1, line 51 through column 2, line 4, specifically states:

Essentially ABNS is a communications system for railroads for communication between a dispatcher and field units such as locomotives, rubber tire vehicles, trackside equipment and yard and terminal operations, in which the data being communicated consists of train control, location and speed monitoring, track warrants and bulletins and work order reporting.

The information in this quote is being transmitted from the dispatcher to the locomotive. The dispatcher wants to control the train, tell the train its location and indicate its speed. It also includes track warrants, bulletins and other work order reporting. This notifies the locomotive and the engineer what is occurring in the next section of track before the next reporting from a wayside station. ABNS control is remote control by the dispatcher at various positions along the track. As each train moves into a different position on a track, it receives new information of how it should be controlled through the next portion of track and other information to allow the engineer to appropriately control the train. That is why the information being transmitted is (a) from the dispatcher to the train versus being collected on the train, and (b) the communication is initiated from the wayside station. Thus, Neeson et al. does not describe collecting train control, location and speed monitoring, track warrants and bulletins and other work order reporting in data files onboard the train to be transmitted remotely. This information is all coming from the remote location for use on the train.

To further support this argument, the area noted in the Office Action, column 2, lines 5-27, states:

In ABNS, communications with locomotives is initiated through the base stations, which are in contact with mobile communications packages (MCP) on board the locomotives. The MCP may be operatively connected to one or more on-board intelligent devices on the locomotives such as an on-board computer, so that information such as work order reports may be taken.

The information, such as work orders, to be taken is to be taken and stored on that onboard computer from the remote site. A work order is not initiated onboard.

Applicant does not disagree that Neeson et al. describes communications in an onboard computer and intelligent devices. In the description in Neeson et al., the definition of “intelligent devices” is “specifically, that the device have the ability to receive and

understand a Query for Health Report and respond with a Health Report Message.” (Column 2, lines 25-27.)

Neeson et al., as indicated by its title, is an apparatus and method for tracking, reporting and recording equipment inventory on a locomotive. It communicates with devices onboard and builds a “Health Report” indicating their presence or absence and their status. This “Health Report” is transmitted to wayside or base station 54 along the edge of the track, which is subsequently transmitted to the front end processor 46. As specifically indicated in column 8, line 43, “the mobile communications package 12 monitors the on-board intelligent devices and reports initial configuration and configuration changes to the front end processor 46.”

There is no description that the intelligent devices can be event recorders, train performance data or track data in files. As indicated in column 6, lines 36-38, the intelligent devices include the locomotive computer 20, the interrogator 22, and the displays 24, 26 and 28. Even if the intelligent devices are interpreted to include such types of devices, the information in these files are not being collected from the intelligent devices for transmission, but only whether an event recorder train data monitoring devices and track monitoring devices are present or not present or active.

The case law is clear. In *Ecolochem Inc. v. Southern California Edison*, 56 USPQ2d 1065 at 1072, the Court of Appeals for the Federal Circuit stated:

We “cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.” *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1780, 1783 (Fed. Cir. 1988).

As stated in *Chisum on Patents*, Section 5.03[3][F]:

*Reference as Whole -- Picking and Choosing.* In *In re Wesslau* (1965), the Court of Customs and Patent Appeals cautioned that “it is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.” In *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.* (1986), the Federal Circuit held that a single line in a prior art reference should not be taken out of context and relied upon with the benefit of hindsight to show obviousness. Rather, a reference should be considered as a whole, and portions arguing against or teaching away from the claimed invention must be considered.

One of ordinary skill in the art reading Neeson et al. and knowing how the ABNS system works realizes that the information is being transmitted from the wayside to the locomotive and not being collected on the locomotive.

**Point B**

As a second point of distinction, there is no determination onboard of a remote station within range. The description in Neeson et al. is that the remote stations are in control of the communications with the locomotive. As indicated in column 7, the paragraph beginning on line 29, the base stations 52 and 54 maintain contact with the locomotive, and the communication is "passed off" to the next station along the path. The determination and initiation of communication is not from onboard the train.

As noted on page 4 of the rejection, the "passing off" is done at the wayside station. It is not done onboard. The area noted by the Examiner, namely, column 5, lines 6-32 does describe a locomotive making a determination of whether there is radio communication and, if there is not, it does not transmit its report. Since it is a half-duplex system, its continuous transmission would prevent it from receiving a signal from a way station indicating that they have established communication from the way station. The references establish this communication from the way station, and the locomotive, once communication has been determined from the way station, transmits the information. Thus, Neeson et al. only teaches transmitting the information once communication has been established from the way station. This is different from the claimed invention which requires "determining onboard if a remote station is within communication range" and "establishing onboard wireless communication between the onboard computer and the radio station determined to be within communication range."

The general state of the art is illustrated by the three additional patents to Cowan, Swensen et al. and Ehrenberger et al., which basically show that the communication is controlled and directed with information being transferred from a central location to the mobile units in these railroad systems. This is recognized in the Office Action on page 8, which states: "However, Ehrenberger et al. teaches transferring track data (wayside defects) from a remote station (wayside system) to an on-board computer (see Figure 1) . . . ." Thus, viewing Neeson et al. in view of Ehrenberger et al. indicates where the information is originating from as well as communication.

The references must be read as a whole and cannot be interpreted in hindsight in view of the claimed invention. One of ordinary skill in the art with knowledge of ABNS and other

wayside stations know that communication is instituted by the wayside station and not onboard.

In conclusion, Neeson et al. cannot anticipate the claims nor be a base reference to be combined with other patents to make the claims obvious.

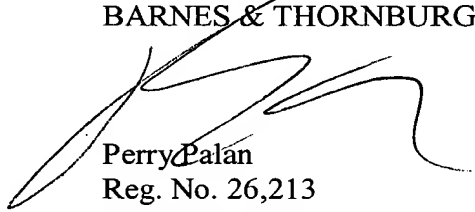
Claims 1-7, 9, 10, 12-21, and 46-49 are considered allowable. Since Claim 1 is still considered generic, Claims 12-14 should also be considered.

An earnest attempt has been made to respond fully to the Examiner's rejections to the claims and to place the instant application in condition for allowance. Thus, passage of this case to issue is respectfully solicited.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response and shortages in other fees be charged, or any overpayment in fees be credited, to the Account of Barnes & Thornburg, Deposit Account No. 02-1010 (509/35644).

Respectfully submitted,

BARNES & THORNBURG



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